

**THIS OPINION IS NOT A
PRECEDENT OF THE TTAB**

Mailed:
May 27, 2008
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re KWI LLC

Serial No. 78555941

Max Shaftal and Scott W. Smilie of Patzik Frank & Samotny
Ltd. for KWI LLC.

Edward Nelson, Trademark Examining Attorney, Law Office 106
(Mary I. Sparrow, Managing Attorney).

Before Walters, Bucher and Holtzman, Administrative
Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

KWI LLC seeks registration on the Principal Register of
the mark shown below:

KINGWIRE

for goods identified in the application, as amended, as

"bulk electrical cables and electrical wires" in

International Class 9.¹

¹ Application Serial No. 78555941 was filed on January 28, 2005 based upon applicant's allegation of a *bona fide* intention to use the mark in commerce.

This case is now before the board on appeal from the final refusal of the Trademark Examining Attorney to register this designation based upon Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). The Trademark Examining Attorney has found that applicant's mark, when used in connection with the identified goods, so resembles the following three marks, all owned by the same party:



for, *inter alia*, "metal electrical wire connectors, metal wire reel stands" in International Class 6;²

KING CONNECTORS

for "electrical wire connectors" in International Class 9;³ and

KING INNOVATION

for, *inter alia*, "electrical wire connectors" in International Class 9;⁴

as to be likely to cause confusion, to cause mistake or to deceive.

² Registration No. 1726997 issued on October 27, 1992; renewed. This registration also has a long listing of plumbing fittings, couplings and other supplies in International Class 11.

³ Registration No. 1871827 issued on January 3, 1995; renewed. No claim is made to the word "Connectors" apart from the mark as shown.

⁴ Registration No. 3021387 issued on November 29, 2005. This registration also has a long listing of plumbing fittings, couplings and other supplies in International Classes 11 and 17.

The Trademark Examining Attorney and applicant have fully briefed the case. We reverse the refusal to register.

In arguing for a likelihood of confusion, the Trademark Examining Attorney contends that in light of the common usage of the leading word "King," these marks create the same commercial impression; that the goods are closely related; that ordinary purchasers will be purchasing the goods of registrant and of applicant; and that the evidence of actual third-party uses of "King-" formative marks on related goods and services in the marketplace has no evidentiary value.

By contrast, applicant contends that in view of the relative weakness of the term "King" in the relevant industry, combined with the differences in the appearance and connotations of the marks, there is no likelihood of confusion, mistake or deception in the field of electrical wiring components between its **KINGWIRE** mark and the cited marks. Applicant takes the position that the Trademark Examining Attorney has incorrectly dissected applicant's mark while ignoring elements of several of the cited marks. As to the respective goods, applicant argues that they are different, and that applicant's bulk goods, by definition, will be sold to sophisticated purchasers who

exercise heightened levels of care in making purchasing decisions.

Likelihood of Confusion

We turn then to a consideration of the issue of likelihood of confusion. Our determination of likelihood of confusion is based upon our analysis of all of the probative facts in evidence that are relevant to the factors bearing on this issue. See *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003).

The number and nature of similar marks in use on similar goods

Applicant has placed into the record current information from the Internet about third-parties, most of whom market electrical wire or electrical connectors:

Kings Electronics Company

- Over \$9 million in annual sales, with the primary goods being electrical connectors, the same goods as the cited registrations
- company was founded in 1947
- Kings Electronics Company has a trademark application for KINGS [Registration No. 3339550 issued on November 20, 2007 for, *inter alia*, electrical connectors
<http://goliath.ecnext.com/> and
<http://kingselectronics.com/>

King Electrical Manufacturing Company

- over \$11 million in sales for electrical components for wall heaters, fans and other house wares
- founded in 1950
<http://goliath.ecnext.com/>

King Electrical Contractors, Inc.

- a general electrical contractor having over \$3.4 million in annual sales related to electrical work
<http://goliath.ecnext.com/>

Kord King

- OEM manufacturer of electrical power cords, cord sets, custom extension cords and wire harness
<http://www.kordking.com/>

King-Cord

- manufacturer of various cord sets and power supply cords
<http://www.king-cord.com/contact/index.html>,
<http://www.sourceesb.com/Distributors.asp?titleid=44236®id=0&sname=Manufacturer&type=W&search=King-Cord> and <http://www.glsmith.com/line1.htm>

King Electronics Distributing

- distributor of electronic products including, cables/connectors and wire testing equipment
<http://www.kingelectronics.com/index.asp?sid=650882892AEF4C7CA6E447115F4D8BF3&action=product&id=201> and <http://goliath.ecnext.com/>

King Electronics Co.

- over \$3 million in annual sales
- manufactures and markets electronic instruments and equipment for the testing of various components used on and in internal combustion engines

- founded in 1914
<http://www.4king.com/> and
<http://goliath.ecnext.com/>

The Cable King

- online distributor of a variety of designer cables
<http://www.thecableking.com/>

King Steel Corp.

- manufacturer of steel products for the wire industries <http://www.kingsteelcorp.com/products-wire.asp>

King Manufacturing Co., Inc.'s

- **KING STAPLES** for electric cable staples for armored or non-metallic electrical cables
<http://electrical.hardwarestore.com/14-46-cable-staples.aspx>

King Electric Fitting Factory

- manufacturer of automation and industrial control products, including electrical wire, cables and connector plugs
<http://www.tradekey.com/>

King Lagger Inc.

- manufacturer of hand tools including wire cable strippers
<http://www.handtoolsb2b.com/> and
http://www.autopartsb2b.com/work/servlet/grn_product?supplier=638&industry=HT&cate=HT19002

Craft King

- retail and on-line retail store featuring craft supplies, including craft wire
http://www.craftking.com/crafthtml/craft_wire.htm

Applicant points out that the record, as summarized herein, shows thirteen electrical/electronic contractors and

electrical wire or electrical connector manufacturers who actually use the term "King" or "Kings" as service marks or house marks. Apparently, none of these entities is related to another, and this listing of trademark owners/entities does not include applicant or registrant. Applicant argues that this demonstrates that registrant's "King" marks are relatively weak and only entitled to a narrow scope of protection, citing to *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1693 (Fed. Cir. 2005). In response, the Trademark Examining Attorney argues, without citation, that these submissions "are without any evidentiary value whatsoever" inasmuch as they "are not even registrations ..." (Trademark Examining Attorney's brief, at unnumbered 9).⁵ As presented by applicant, we find that this contemporaneous indication of "what is happening in the marketplace" is appropriate matter for us to consider in analyzing the sixth *du Pont* factor as we make our determination as to likelihood of confusion.

⁵ Earlier in this same paragraph, the Trademark Examining Attorney discounted the evidentiary value of applicant's submission of third-party registrations having "King-" formative marks inasmuch as they "are not evidence of what happens in the marketplace or that the public is familiar with the use of those marks."

The Goods

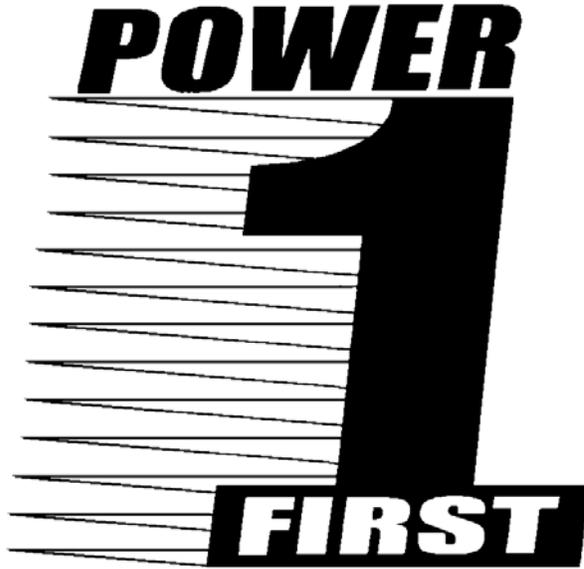
As seen above, the goods in the cited registration are identified as electrical wire connectors and metal wire reel stands. Applicant's goods are identified as "bulk electrical cables and electrical wires." Apart from the differences implicit in the critical "bulk" qualifier in applicant's identification of goods, applicant manufactures only electrical wires and cables, while registrant does not sell wires or cables, but markets only connectors.

The Trademark Examining Attorney argues correctly that it is not necessary that applicant's goods be the same as registrant's in order to find a likelihood of confusion. Rather, it is sufficient that these respective goods are related in some fashion, e.g., registrant's types of goods could be used for connecting applicant's types of electrical cables and wires. The Trademark Examining Attorney submitted for the record the three following third-party registrations showing the same marks have been adopted for goods identified as electrical wires and wire connectors. *See In re Infinity Broad. Corp.*, 60 USPQ2d 1214, 1217-1218 (TTAB 2001); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); and *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467, 1470 at n.6 (TTAB 1988):



for "photographic equipment, namely, flashlight devices, flashbulbs, and flashlight lamps; apertures, reflectors, shutters, and optical filters for photographic and optical technical purposes; cameras; optical instruments, namely, objectives and lenses; photographic exposure meters and distance meters; film and photo projection devices and screens; stands for cameras, lights, flashlights and reflectors; photographic light regulators; video recorders, cameras and editing apparatuses; photographic film printing devices; batteries and battery chargers; electrical wires and wire connectors; electrical controllers; light and thermal devices for curing and drying lacquers for photographic processing; ceiling mounted electric rail sockets for lights; electronic devices, namely, resistors, transistors and condensers; and mechanical clamps for fixing reflectors to cameras and light devices" in International Class 9; "lights for photo studios and illuminating rooms; and lamps and steady-burning lamps, in particular for photographic use" in International Class 11;⁶

⁶ Registration No. 2090407 issued to Studiotechnik W. Hensel GmbH & Co. KG under Section 44(d) of the Act on August 26, 1997. No claim is made to the word "Light" apart from the mark as shown. Section 8 affidavit (six-year) accepted and Section 15 affidavit acknowledged.



for, *inter alia*, "electrical power extension cords, electrical and communication cable, parallel ground adapters, battery and cable electrical connectors, electrical wire connectors, electrical conduit connectors, electrical switch boxes and switch plates, electrical outlet boxes and covers, electrical power strips, voltage surge protectors, electric wall switches, telephone cord jacks, telephone cord couplers, electrical wires, electricity conduit boxes, electricity conduit body covers, electrical boxes and box covers, electrical receptacles, and ground fault circuit interrupter receptacles" in International Class 9;⁷



for "electrical wires, electrical wire connectors, namely terminal connectors, electrical wire and cable lugs and cushion clamps for securing electrical wire and cable" in International Class 9.⁸

⁷ Registration No. 2821454 issued to W.W. Grainger, Inc. on March 9, 2004. No claim is made to the word "Power" apart from the mark as shown.

⁸ Registration No. 2769380 issued to GB Tools and Supplies, Inc. on September 30, 2003.

As to the Hensel registration (the first one of three above), since the submission of the sixth-year affidavit under Section 8 of the Lanham Act, use in commerce with the U.S. has been claimed. However, we note that the listed goods in this registration all comprise photographic studio lighting equipment. Absent some demonstration that the trade channels for this specialized photographic equipment are the same as for supplies for electrical wiring, this registration is not particularly helpful to the position of the Trademark Examining Attorney herein.

Further, the two remaining registrations are insufficient to show that the respective goods are of a type which purchasers would typically expect to emanate from the same source. Therefore, we conclude that the Trademark Examining Attorney has failed to establish a relationship between applicant's bulk electrical cable and wire and the goods in the cited registrations. This critical factor weighs against a finding of a likelihood of confusion.

Trade channels and conditions of sale

We note applicant's argument that the Trademark Examining Attorney unfairly diminished the significance of the "bulk" qualifier in applicant's identification of goods. While we agree that applicant's bulk goods are unlike the

electrical wire purchased at the local hardware store by the do-it-yourselfer, the cited registrations are not limited and also encompass bulk sales of electrical connectors. Thus, the trade channels may be overlapping and this factor is neutral or weighs slightly in favor of a finding of likelihood of confusion.

However, we agree with applicant that with its critical limitation to its goods, applicant's *bulk* cables and wires would likely be sold to national hardware and electrical supply houses, retail hardware and electrical supply chains, large electrical contractors, etc. Manufacturers of "bulk electrical cables and electrical wires" would be unlikely to distribute small quantities of product to electricians or do-it-yourselfers. Rather, they would be accustomed to dealing with large sales of bulk cables and wires having significant minimum purchases (" ... if you are looking for 1,000 or 500,000 units [of power cord sets]," Kord King, OEM manufacturer of electrical power cords, cord sets, custom extension cords and wire harness <<http://www.kordking.com/>>). Accordingly, applicant is not dealing in impulse items and does not trade with members of the general public. Its customers are, by definition, knowledgeable about the quality, capabilities and source of the products they are purchasing. The same is likely to be true of the bulk

purchasers of registrant's goods. In view of the sophistication of these purchasers and the demonstrated weakness of the term "King" in the electrical field, we find that the factors of the nature of the purchasers and conditions under which sales occur weigh against a finding of likelihood of confusion. In view of the noted weakness of the term "King," we are not persuaded otherwise by the Trademark Examining Attorney arguments that even if we were to assume that applicant's customers are sophisticated, they are still not immune from source confusion.

The marks

Accordingly, we turn then to the *du Pont* factor focusing on the similarities or dissimilarities between applicant's mark and each of registrant's three cited marks as to appearance, sound, connotation and commercial impression. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 73 USPQ2d at 1692.

Applicant argues that the Trademark Examining Attorney has improperly dissected the involved marks, focusing only on the common word "King," and thereby failing to consider the other distinguishing characteristics of the respective marks. *See Shen Mfr. Co. Inc. v. The Ritz Hotel Ltd*, 393 F.3d 1238, 73 USPQ2d 1350 (Fed. Cir. 2004) [overturning

finding of likelihood of confusion determination between **RITZ** and **THE RITZ KIDS** inasmuch as the board had improperly dissected the marks, focusing only on the term "Ritz"].

When comparing the appearance of applicant's **KINGWIRE** mark and registrant's **KING** mark, it is true that applicant's special form drawing, unlike registrant's mark, may be perceived as having the look of a strand of wire having parallel lines running from left to right straight through the word "Kingwire." However, we note that both design marks do have white strips against black letters and these design elements are unlikely to distinguish the marks when viewed separately in time and location.

Applicant contends, given the overall presentation of its special form mark, that the word "Wire" is "an integral and non-separable part of [its] mark." There is a slight difference in sound between applicant's mark, "Kingwire" and the registered mark "King" inasmuch as applicant's mark has a second syllable, "Wire." However, as noted by the Trademark Examining Attorney, "Wire" is a merely descriptive portion of applicant's mark, which is not diminished by the telescoping of the two words comprising the mark; and the leading word "King" is the dominant element of "Kingwire" when used in connection with electrical wires. Therefore,

we do find applicant's mark is substantially similar to the registered **KING** design mark.

We now turn to a comparison of registrant's **KING CONNECTORS** mark and the single word **KINGWIRE**. In the context of applicant's goods, the word "wire" has a meaning limited to electrical supplies. In the context of registrant's goods, the word "connectors" conjures up items connecting electrical wires and/or plumbing fixtures. However, both marks consist essentially of the word **KING** followed by the name of a product. While the commercial impressions of the marks are slightly different, the marks are sufficiently similar that, if used in connection with related goods, they could be perceived as two product lines from the same source.

As to registrant's **KING INNOVATION** mark, in the context of registrant's goods, the word "Innovation" may well be suggestive of state-of-the-art electrical wires and/or plumbing fixtures, but carries with it a greater capacity to distinguish the marks than does the word "Connectors." When spoken, applicant's mark is two syllables compared with registrant's five syllables. Arguably, the differences in commercial impressions with applicant's applied-for mark are greatest when compared with this third mark. However, if

used to identify related goods, the marks are sufficiently similar that confusion as to source is likely.

Therefore, this *du Pont* factor weighs against applicant.

Conclusion

Accordingly, while acknowledging the similarities between applicant's mark and each of registrant's marks, the factors of the lack of an established relationship between the goods and the sophistication of the respective purchasers of these goods in bulk overwhelmingly weigh against a finding of a likelihood of confusion.

Decision: The refusal to register is hereby reversed, and the involved application will issue in due course.